IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

Crl.Rev.Pet.No. 756 of 2006()

AGAINST THE ORDER DATED 30/09/2005 IN CRA.171/2005
ADDL. SESSIONS, COURT (ADHOC-II), THODUPUZHA
CC.1/2005 of CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA

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REVN. PETITIONER:

SASIDHARAN, C.NO.4636,
CENTRAL PRISON, VIYYOOR, THRISSUR
(S/O. BHASKARAN, MANNUSSERIL VEEDU,
ARAKKULAM KARA, DO. VILLAGE)

BY ADV. SMT.VINITHA PRASANNAN (STATE BRIEF)

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI MOHAMED PUZHAKKARA.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 756 OF 2006

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Dated this the 5th day of January, 2007

O R D E R

First accused in C.C. No.1 of 2005 on the file of the Judicial First Class Magistrate, Thodupuzha is the Revision petitioner. Petitioner was found guilty of the offences punishable under Sections 457, 461 and 380 IPC. He was sentenced to undergo rigorous imprisonment for 2 years under Section 457, 1 year under Section 461 and 3 years under Section 380. He was also directed to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo simple imprisonment for 1 month for the offence under Section 380. Petitioner is undergoing the sentence. He filed Criminal Appeal No. 171 of 2005 before the Sessions Court, Thodupuzha through the Superintendent of Central Prison, Viyyur challenging the conviction and sentence. Learned Sessions Judge dismissed the appeal confirming the conviction and sentence. Challenging the conviction and sentence, this Criminal Revision Petition is filed. Since petitioner was unable to engage a counsel of his choice, Smt.Vinitha Prasannan was appointed as counsel on

State Brief to defend the case of revision petitioner. Criminal Revision Petition is heard and disposed of after hearing counsel for the petitioner as well as Public Prosecutor.

2. Learned counsel for petitioner has argued that there is no legal or acceptable evidence to connect petitioner to the offences alleged. It is argued that prosecution is relying on the evidence of P.W.2, who was declared hostile, to find petitioner guilty of the offences. It is argued that sentence imposed is highly excessive.

3. P.W.1 was the Headmaster of St.Joseph's L.P. School, Arakaulam. At about 5.30 p.m. on 5.6.2004, which happened to be a Saturday, he closed the School and left the place. He came back to the School at about 8.50 a.m. on 7.6.2004. At that time it was found that somebody had trespassed into the office room breaking open door and forcibly opened the table and almirah using force and committed theft of currency notes worth Rs.5,729/- and a Sansui tape recorder, value of which comes to Rs.2,000/-. According to prosecution theft was committed on 5.6.2004 by revision petitioner along with other accused in the

case. It is also the prosecution case that a Wall Clock and certain vessels used for serving noon meals to the students in the school were also stolen. Vessels were recovered from the possession of P.W.5, who is the wife of second accused. Tape recorder was seized from P.W.4 in pursuance of the information furnished by revision petitioner.

4. It is true that there is no direct evidence to prove the offence alleged against revision petitioner. P.W.1, who was the Headmaster of the School deposed that there were classes for the students on 5.6.2004 and after class hours, he closed the door of the office as well as school premises and left the School at 3.30 p.m. He had also deposed that on the morning of 7.6.2004, i.e., next Monday, he came to the school. Then he saw the children standing outside the School. He further deposed that door of the class room which leads to the office room was forcibly opened. He entered into the room. He came to understand that the tape recorder, Wall clock and the money kept in the table were stolen. Some vessels were also stolen. He identified M.O.1 tape recorder, M.O.2 vessel and M.O.3 series of steel plates.

According to him door was opened using M.O.5 series of Wooden blocks. During cross-examination he denied the suggestion that school was closed by non-teaching staff. He deposed that there was no non-teaching staff attended to the school at the relevant time. So the evidence of P.W.1 proves beyond reasonable doubt that M.O.1 tape recorder, M.O.2 vessel and M.O.3 series of steel plates were stolen from the School. Though Wall Clock and cash wroth Rs.5,729/- were also stolen, those articles were not recovered. Evidence of P.W.2 shows that first accused, Sasidharan, revision petitioner, came to his tea shop and had a cup of tea. He deposed that accused informed him that he want to go to Thodupuzha and for that he require some money. As a security, he entrusted the tape recorder with him. He further deposed that that was taken by the second accused and was recovered from the possession of P.W.4. P.W.2 identified M.O.1 tape recorder entrusted with him by revision petitioner. P.W.3 is an attester to seizure mahazar of M.O.1 tape recorder. He admitted his signature but denied the contents. P.W.4 is an independent witness. She deposed that M.O.1 was entrusted with

her by the second accused. It is true that she denied the version of the police that the same was entrusted with her by P.W.2 But she admitted that police party came to her house with the first accused, P.W.2, P.W.3 and at that time she produced the tape recorder before the police. So the evidence of P.Ws.1, 2 and 4 proves beyond reasonable doubt that M.O.1 tape recorder which was stolen from the school was seized from the possession of P.W.4. Evidence also shows that it was seized in pursuance of the confession made by the revision petitioner. That fact is corroborated by the evidence of P.W.2 also. P.W.5 produced M.O.2 before the police. She deposed that those vessels were entrusted with her by accused 1 and 3. So the only inference possible is either it was the revision petitioner who committed the theft of M.Os.1 to 3 series or he was found to be in possession of the stolen articles. In view of the materials on record both the courts below concurrently found that it was the revision petitioner who committed the theft of M.Os.1 to 3. Hence the findings of the courts below that petitioner had committed the offences punishable under Sections 457, 461 and 380 IPC are

only to be confirmed. I confirm the finding of the courts below that the petitioner is guilty of the offences charged. His conviction is also confirmed.

5. Learned counsel appearing for the revision petitioner has argued that sentences imposed are highly excessive. It is argued that there is nothing on record to show that the petitioner was a habitual offender. Considering the facts and circumstances of the case, I am of the view that the sentence of 3 years' rigorous imprisonment imposed on the petitioner under Section 380 IPC can be modified and reduced to rigorous imprisonment for 2 years. But I do not find any reason to interfere with the sentences imposed under Sections 457 and 461 IPC.

6. In the result, Criminal Revision Petition is allowed in part. Finding of the courts below that petitioner is guilty of the offences punishable under Sections 457, 461 and 380 IPC is confirmed. Conviction is also confirmed. But sentence imposed under Section 380 IPC is modified and reduced to rigorous imprisonment for 2 years instead of 3 years. Sentences imposed

under Section 457 and 461 are confirmed.

Communicate a copy of this order to the Superintendent of Central Prison, Viyyur.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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O R D E R

5TH JANUARY, 2007